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No. 91-316

In The

Supreme Court of the United States

October Term, 1991

JOE REDNER, ET AL.,

Petitioners,

v.

CITRUS COUNTY, FLORIDA, ET AL.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENTS BRIEF IN OPPOSITION

RUSSELL W. LAPEER
Counsel of Record
and
ROBERT R. WHEELER
PATTILLO & MCKEEVER, P.A.
Post Office Box 1450
Ocala, Florida 32678
(904) 732-2255

Attorneys for Respondent, Citrus County, Florida

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Whether the court of appeals' ruling, endorsing *Younger v. Harris'* abstention, is inconsistent with this Court's decisions, because of a bad-faith or an irreparable harm exception.

2. Whether Petitioner's claim of equitable estoppel under Florida law, which was rejected by the district court and affirmed by the court of appeals, presents an issue appropriate for review by this Court.

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STATEMENT OF CASE

For the limited purpose of this Court considering the issues raised in the Petition for Writ of Certiorari by Petitioner Redner, the Statement of the Case in that Petition may be accepted.

SUMMARY OF ARGUMENT

The court of appeals' ruling, endorsing the principle of *Younger* abstention, is consistent with this Court's decisions. Petitioner failed to demonstrate any existence of bad faith. No evidence existed that Redner was prosecuted without the reasonable probability of obtaining a conviction. Additionally, Petitioner has not shown extraordinary circumstances constituting irreparable harm which would entitle him to relief. He did not refrain from conduct in the face of threatened prosecution, but violated the ordinance without challenging it.

Petitioner's request for this Court's review of his claim of equitable estoppel under Florida law is inappropriate. This Court should defer to the court of appeals' application of ample Florida case law, in ruling that equitable estoppel did not apply.

ARGUMENT

I. NOTHING ABOUT THE COURT OF APPEALS' (AND THE DISTRICT COURT'S) RULINGS ENDORSING *YOUNGER V. HARRIS* ABSTENTION IS INCONSISTENT WITH, OR CONTRADICTORY TO, THIS COURT'S DECISIONS.

In *Younger v. Harris*, this Court declared that "it has been perfectly natural for our cases to repeat time and

time again that *the normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions.*" 401 U.S. 37, 45, 91 S.Ct. 746, 751, 26 L.Ed.2d 669 (1971) (emphasis added).

> Here a proceeding was already pending in the state court, affording Harris [the plaintiff] an opportunity to raise his constitutional claims. There is no suggestion that this single prosecution against Harris is brought in bad faith or is only one of a series of repeated prosecutions to which he will be subjected. In other words, the injury that Harris faces is solely "that incidental to every criminal proceeding brought lawfully and in good faith," . . . and therefore under the settled doctrine which we have already described, he is not entitled to equitable relief "even if such statutes are unconstitutional."

Id. at 49, 91 S.Ct. at 753. "So long as [petitioner's] challenges relate[d] to pending state proceedings, proper respect for the ability of state courts to resolve federal questions presented in state court litigation *mandates that the federal court stay its hand.*" *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 14, 107 S.Ct. 1519, 1527 (1987) (emphasis added). No extraordinary or exceptional circumstances, nor instance of bad faith have ever been shown to exist in the case at hand, as the court of appeals concluded. *Redner v. Citrus County, Fla.*, 919 F.2d 646, 650 (11th Cir. 1990).

Petitioner's arguments of bad-faith, and irreparable-harm exceptions to *Younger v. Harris* abstention (1) were consistently rejected by the court of appeals and the district court below, because (2) in the facts of this case, they are squarely repugnant to this Court's decisions and pronouncements.

A. No Bad-Faith Exception Was Ever Demonstrated.

Petitioner Redner confuses the enactment of the temporary Citrus County adult entertainment licensing ordinance (88-05),[1] which he was convicted of thrice violating, with the prosecution of him for violation of the ordinance.

Perez v. Ledesma, 401 U.S. 82, 91 S.Ct. 674, 27 L.Ed.2d 701 (1971) involved state-court criminal prosecutions of operators of news stands displaying and selling allegedly obscene materials. The operators obtained an injunction from the federal district court against their prosecution by the state of Louisiana in the state courts. *Id.* at 83-84, 91 S.Ct. at 676. This Court reversed.

> According to our holding in *Younger v. Harris, supra*, such federal interference with a state prosecution is improper. The propriety of arrests and the admissibility of evidence in state criminal prosecutions are ordinarily matters to be resolved by state tribunals, . . . subject, of course, to review by certiorari or appeal in this Court or, in a proper case, on federal habeas corpus.

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[1] Petitioner points to statements made during the legislating session of the Board of County Commissioners of Citrus County. Petition for Writ of Certiorari (Petition), at 13 n.3. It yields him no headway. The constitutionality of legislation may not be attacked based on the subjective considerations and motives of those who enacted it. *United States v. O'Brien*, 391 U.S. 367, 382-84, 88 S.Ct. 1673, 1682-83, 20 L.Ed.2d 672 (1968).

Id. at 84-85, 91 S.Ct. at 676-77. The federal court's injunction had "crippl[ed] Louisiana's ability to enforce its criminal statute against Ledesma," but

> There [was] nothing in the record before us to suggest that Louisiana officials undertook these prosecutions other than in a good-faith attempt to enforce the state's criminal laws.

Id. at 85, 91 S.Ct. at 677.

In the case at hand, the court of appeals followed this Court's standard for bad-faith prosecution, stated in *Kugler v. Helfant*, 421 F.2d 117, 126 n.6, 95 S.Ct. 1524, 1531 n.6, 44 L.Ed.2d 15 (1975), as one where "a prosecution has been brought without a reasonable expectation of obtaining a valid conviction." *Redner v. Citrus County, Fla.*, 919 F.2d at 650. In *Kugler v. Helfant*, the plaintiff filed suit in federal court to enjoin a state-court criminal prosecution against him, based on allegations that the New Jersey Attorney General and members of the New Jersey Supreme Court had acted together, in collusion, to coerce testimony by him, a municipal judge, before a grand jury, and to bring about the prosecution of him. *Id.* at 125-26 & n.6, 95 S.Ct. at 1531 & n.6. This Court "[did] not agree that these facts bring this litigation within any exception to the basic *Younger* rule" of abstention. *Id.*

The facts in the present case, less unusual or atypical than those in *Kugler v. Helfant*, place this case far beyond any exception to the fundamental rule of *Younger v. Harris* abstention. The court of appeals found "no evidence that the prosecution was brought without reasonable

probability of obtaining a valid conviction,"[2] other than the enactment of the ordinance itself. 919 F.2d at 650 & n.8.

> Only in cases of proven harassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a valid conviction and perhaps in other extraordinary circumstances where irreparable injury can be shown is federal injunctive relief against pending state prosecutions appropriate.

Mitchum v. Foster, 407 U.S. 225, 230-31, 92 S.Ct. 2151, 2156 32 L.Ed.2d 705 (1972); *quoting Kugler v. Helfant*.

B. No Irreparable Harm Exception Was Ever Shown.

In *Younger*, this Court emphatically reaffirmed "the fundamental policy against federal interference with state state criminal prosecutions."

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[2] In fact the reasonable probability of obtaining a conviction of Petitioner Redner, for his three violations of Citrus County adult entertainment licensing ordinance (88-05) ripened into certainty; and his convictions were affirmed on appeal, with further state-court, discretionary review denied.

Petitioner Redner then began, in the state courts, collateral attacks on his convictions, following which he brought a petition for writ of habeas corpus in the same federal district court that had abstained from deciding the merits of his challenges to the constitutionality of the temporary licensing ordinance in his federal, civil rights lawsuit. That petition for writ of habeas corpus, challenging the validity of his convictions – by raising the same attacks on the constitutionality of the same temporary licensing ordinance – remains pending before the federal district court.

> 401 U.S. at 46, 91 S.Ct. at 751. It made clear that *even "the possible unconstitutionality of a statute 'on its face' does not in itself justify an injunction against good faith attempts to enforce it."*

Id., at 230, 92 S.Ct. at 2156 (emphasis added).

No genuinely extraordinary circumstances, to justify deviating from the *Younger v. Harris* principle of abstention, were ever shown – or exist – in the case at hand.

> The very nature of "extraordinary circumstances," of course, makes it impossible to anticipate and define every situation that might create a sufficient threat of such great, immediate, and irreparable injury as to warrant intervention in state criminal proceedings. But whatever else is required, such circumstances must be "extraordinary" in the sense of creating an extraordinarily pressing need for immediate federal equitable relief, not merely in the sense of presenting a highly unusual factual situation.

Kugler v. Helfant, 421 U.S. at 124-25, 95 S.Ct. at 1531.[3]

Younger v. Harris was a classic case, involving the exercise of First Amendment liberty to express political views. The plaintiffs in federal court were subject to prosecution, as defendants, in the California state courts because the expression of their political views appeared to violate a state "Criminal Syndicalism Act." This Court reversed the district court's injunction "as a violation of the national policy forbidding federal courts to stay or

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[3] This Court described some examples to the type of extraordinary circumstances, warranting federal intervention as an exception to *Younger* abstention. *Id.* at 125 n.4, 95 S.Ct. at 1531 n.4.

enjoin pending state court proceedings except under special circumstances." 401 U.S. at 41, 91 S.Ct at 749. "[This] Court also made clear that in view of the fundamental policy against federal interference with state criminal prosecutions, even irreparable injury is insufficient unless it is 'both great and immediate.' " *Id.* at 46, 91 S.Ct. at 751.

The Court declared that "the existence of a 'chilling effect,' even in the area of First Amendment rights, has never been considered a sufficient basis, in and of itself, for prohibiting state action." *Id.* at 51, 91 S.Ct. at 754.

> [T]he chilling effect that admittedly can result from the very existence of certain laws on the statute books does not in itself justify prohibiting the State from carrying out the important and necessary tasks of enforcing these laws against socially harmful conduct that the State believes in good faith to be punishable under its laws and Constitution.

Id. at 51-52, 91 S.Ct. at 754. "[T]his sort of 'chilling effect,' as this Court called it, should not by itself justify federal intervention." *Id.* at 50, 91 S.Ct. at 753.

Petitioner Redner was not simply "placed 'between the Scylla of intentionally flouting state law and the Charybdis of forgoing what he believes to be constitutionally protected activity in order to avoid becoming enmeshed in [another] criminal proceeding.' " *Wooley v. Maynard*, 430 U.S. 705, 710, 97 S.Ct. 1428, 1433, 51 L.Ed.2d 752 (1977). The then-ongoing, state-court, criminal proceedings against him, deprived him of the status (unlike the plaintiffs in *Wooley v. Maynard, supra*) of one confronted with the simple alternatives (1) of refraining from

intended activity, or (2) being charged with criminal prosecution for the conduct.

This Court has explained the differences between persons, like Petitioner Redner, faced with ongoing, state criminal proceedings because of their conduct, and those whose conduct has been inhibited by the threat of prosecution.

> The classic example is the petitioner in *Steffel [v. Thompson*, 415 U.S. 452, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974)], and his companion. Both were warned that failure to cease pamphleteering would result in their arrest, but while the petitioner in *Steffel [v. Thompson]* ceased and brought an action in the federal court, his companion did not cease and was prosecuted on a charge of criminal trespass in the state court. 415 U.S., at 455-456, 94 S.Ct. at 1213-1214. The same may be said of the interest in conservation of judicial manpower. As worthy a value as this is in a unitary system, the very existence of one system of federal courts and 50 systems of state courts, all charged with the responsibility for interpreting the United States Constitution, suggests that on occasion there will be duplicating and overlapping adjudication of cases which are sufficiently similar in content, time, and location to justify being heard before a single judge had they arisen within a unitary system.

Doran v. Salem Inn, Inc., 422 U.S. 922, 928, 95 S.Ct. 2561, 2566, 45 L.Ed.2d 648 (1975).

This Court rejected the notion "that all three plaintiffs should automatically be thrown into the same hopper for *Younger [v. Harris* abstention] purposes, and should thereby each be entitled to injunctive relief," *id.*,

ruling that one of the three corporate defendants, having chosen to pursue its conduct and encounter criminal prosecution, was "squarely governed by *Younger [v. Harris* abstention]," precluding it from injunctive or declaratory relief. *Id.* at 929, 95 S.Ct. at 2566-67. The other two corporate defendants, that refrained from their proposed activity and avoided prosecution, "were entitled to have their claims for preliminary injunctive relief considered without regard to *Younger's* restrictions." *Id.* at 931, 95 S.Ct. at 2567.

In this case, the court of appeals affirmed the district court, which followed this Court's analysis, and distinguished between those who refrain from conduct altogether, in the face of threatened prosecution; and Petitioner Redner who defied the Citrus County ordinance, without challenging it, embroiling him in ongoing, state criminal proceedings concerning his adult-entertainment activity without a license, in deference to which abstention was required.

II. THE COURT OF APPEALS' AFFIRMANCE OF THE DISTRICT COURT, REJECTING PETITIONER REDNER'S CLAIM OF EQUITABLE ESTOPPEL UNDER FLORIDA LAW, PRESENTS NO ISSUE APPROPRIATE FOR REVIEW BY THIS COURT.

Petitioner acknowledges[4] that "[r]elying entirely on Florida law,"[5] the Eleventh Circuit "found that estoppel did not apply."

> [Petitioner Redner] did appeal the holding of the district court that Citrus County was not estopped from enforcing 88-A51 [the zoning ordinance] against him. Redner was unentitled to rely on the inaction of Citrus County in not earlier adopting a zoning ordinance regulating the location of adult entertainment facilities. So, estoppel does not apply. *See City of Miami Beach v. 8701 Collins Ave., Inc.*, 77 So.2d 428, 430 (Fla. 1954); *City of Ft. Pierce v. Davis*, 400 So.2d 1242, 1244 (Fla. App. 4th Dist. 1981); *Pasco County v. Tampa Development Corp.*, 364 So.2d 850, 853 (Fla. App. 2d Dist. 1978).

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[4] Petition at 28.

[5] It is unclear whether Petitioner (for the first time) attempts to argue a claim of equitable estoppel under federal common law – "[t]his Court has historically recognized and applied the doctrine of equitable estoppel"; and "[Petitioner] sought [his] relief, based on the *due process claim* of equitable estoppel," *see id.* at 27, 28 – but he cannot have it both ways. He argued, and supported with state-law authorities, his claim of equitable estoppel under Florida law. The district court rejected the claim, and the court of appeals affirmed, on those same authorities.

Redner v. Citrus County, Fla., 919 F.2d 646, 648 n.4 (11th Cir. 1990).

This Court has emphasized "that, standing alone, a challenge to state-law determinations by the court of appeals will rarely constitute an appropriate subject of this Court's review." *Haring v. Prosise*, 462 U.S. 306, 314 n.8, 103 S.Ct. 2369, 2373 n.8, 72 L.Ed.2d 595 (1983). Notwithstanding a former rule of this Court, now abolished[6], this Court explained its jurisprudential "practice to accept a reasonable construction of state law by the court of appeals 'even if examination of the state-law issue without such guidance might have justified a different conclusion.' " *Id., quoting Bishop v. Wood*, 426 U.S. 341, 346, 96 S.Ct. 2074, 2078, 48 L.Ed.2d 684 (1976).

In *Bishop v. Wood*, a police officer, whose employment had been terminated without a hearing, brought suit contending that he was a permanent employee, pursuant to a city ordinance, and had been deprived of a property interest without procedural due process. *Id.* at 244-45, 96 S.Ct. at 2077.

This Court determined that the claim of entitlement to a property interest in the police officer's employment "must be decided by reference to state law." *Id.* at 345, 96 S.Ct. at 2077. Whether the public employer had actually granted a guaranty of a hearing prior to dismissal "can

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[6] In *Haring v. Prosise, supra.*, this Court cited its former Rule 17, now abolished, which had expressly authorized the granting of certiorari if a court of appeals had decided an important state or territorial question in a way in conflict with applicable state or territorial law. *See* C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 4036 at 41 & n.79.

be determined only by an examination of the particular statute or ordinance in question." *Id.*

The Court acknowledged that the ordinance in question could have been fairly read as conferring such a guaranty; but it could "also be construed as granting no right to continued employment but merely conditioning an employee's removal on compliance with certain specified procedures." *Id.* at 346, 96 S.Ct. at 2078. The district court and the court of appeals, without any state-court decisions as precedent, interpreted the ordinance as conferring no such guaranty. This Court accepted that interpretation of state-law by the lower federal courts.

> We do not have any authoritative interpretation of this ordinance by a North Carolina state court. We do, however, have the opinion of the United States District Judge who, of course, sits in North Carolina and practiced law there for many years. Based on his understanding of state law, he concluded that petitioner "held his position at the will and pleasure of the city." [Footnote omitted.] This construction of North Carolina law was upheld by the Court of Appeals for the Fourth Circuit, albeit by an equally divided court. In comparable circumstances, this Court has accepted the interpretation of state law in which the District Court and the Court of Appeals have concurred even if an examination of the state-law issue without such guidance might have justified a different conclusion.

Id. at 346-47, 96 S.Ct. at 2078. *See Propper v. Clark*, 377 U.S. 472, 486-87, 69 S.Ct. 1333, 1342, 93 L.Ed. 1480 (1949) (Supreme Court hesitates to overrule decision by federal courts on issues of forum state law unless conclusions

unreasonable); *Township of Hillsborough v. Cromwell*, 326 U.S. 620, 630, 66 S.Ct. 445, 451, 90 L.Ed. 358 (1946) (on questions of local law, Supreme Court gives deference to courts familiar with local law).

Additionally, in the past, this Court has dismissed, as improvidently granted, a writ of certiorari when later proceedings, such as "[o]ral argument[,] brought into sharper focus than was apparent at the time we granted the writ that the controversy . . . primarily implicates questions of [state] law and presents no federal question of substance." *Wolf v. Weinstein*, 372 U.S. 633, 636, 83 S.Ct. 969, 972, 10 L.Ed.2d 33 (1963).

Petitioner's challenge to the Eleventh Circuit's application of equitable estoppel under Florida law, is inappropriate for review by this Court. The district court's and the court of appeals' application of Florida law to Petitioner's equitable estoppel claim was reasonable, supported by Florida case law. This Court must give deference to the court of appeals' (and district court's) construction and application of the Florida law of equitable estoppel to the instant case.

CONCLUSION

Petitioner presents no issue under federal law that suggests a justification for certiorari review by this Court. In the two lower federal courts he could present no evidence to demonstrate either a bad faith prosecution, or true irreparable harm, to warrant an exception to *Younger v. Harris* abstention. The court of appeals correctly affirmed the district court's abstention.

Petitioner's issue concerning the Florida law of equitable estoppel is inappropriate for review by this Court. In the face of a body of state-court decisions concerning the Florida law of equitable estoppel, the district court and court of appeals properly applied those decisions, concluding that equitable estoppel did not apply. No cause exists for this Court to question the correctness of the court of appeals' affirmance of the district court on this state-law issue.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

/s/ Russell W. LaPeer
RUSSELL W. LAPEER
Florida Bar No. 200530
Counsel of Record

/s/ Robert R. Wheeler
ROBERT R. WHEELER
Florida Bar No. 796409

PATTILLO & MCKEEVER, P.A.
Post Office Box 1450
Ocala, Florida 32678
(904) 732-2255

Attorneys for Respondent,
Citrus County, Florida